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REPORTS

NOTES OF THE WEEK

Supervision Orders and s. 66

We have heard of a suggestion being made that upon a juvenile being brought before a juvenile court under s. 66 of the Children and Young Persons Act, 1933, the court could be asked to make a fresh supervision order in the interests of the juvenile, the object being to obtain a further provision requiring residence in an approved home after the expiry of an existing 12 months' requirement.

This seems to us contrary to both the letter and the spirit of the law. If it is not considered desirable that a person should be required to reside in an approved home for more than 12 months, it is not right to seek some device for circumventing the policy laid down by law. Further, there is clearly no authority for making a new supervision order under s. 66. That section gives power to make an approved school order or a fit person order, and no other order. The court must either make one of those two or make no order at all. However desirable it may appear to take some other course the court must keep to the powers conferred by the statute.

There is nothing in s. 66 corresponding with the provisions of ss. 6 and 8 of the Criminal Justice Act, 1948, relating to breach of requirement or commission of a further offence by a probationer, whereby the court can deal with the defendant as if it had just convicted him. The juvenile court acting under s. 66 of the Act of 1933 is not authorized to deal with the juvenile as if it had just adjudged him to be in need of care or protection or beyond control, and cannot assume such power.

Young Offenders and Prison Sentences

The observations of the Lord Chief Justice about the present crime wave and the treatment of young offenders have deservedly attracted wide publicity. Lord Parker spoke of the value of the probation system, but said that when there was a crime wave, such as was being experienced in this country, it might be necessary to pass sentences of imprisonment on young offenders as a deterrent to others. Sentences of from six to 12 months imposed instead of fines had proved deterrent, in some cases of conflict between white and coloured youths.

This cannot be denied, and it is also true, as Lord Parker said, that young offenders tended to regard it as their right to be put on probation. This we can understand to a certain extent, as many of these young people have misunderstood recent legislation designed to keep young offenders and first offenders out of prison. Both the legislature and the courts have been at pains to avoid sentences of imprisonment as far as possible, but exceptional times and exceptional cases call for exceptional measures. Lord Parker stated clearly that the sentences he was suggesting were exceptional, called for by the present situation, to be imposed where no long period of detention was necessary and a fine or probation was inappropriate.

It is always regrettable when it becomes necessary to sentence a young offender to imprisonment, but so long as there are not enough detention centres there will be cases in which imprisonment is imposed because the court feels there is no alternative method of dealing with an offender which will be a sufficient lesson to him and a sufficient deterrent to others. A court may reluctantly feel compelled to pass a sentence for the protection of society from crime although it realizes that such sentence is not in the best interests of the offender, whom it would like to help if it were possible.

An Expensive Escapade

It is to be hoped that a youth of 17 whose case is reported in the *Western Mail* of September 18 has now learned his lesson by having to pay £43 in fines and being disqualified for driving for two years. The trouble appears to have begun by his committing the offence of purchasing intoxicating liquor while under age. He is reported to have admitted drinking two bottles of beer, six pints of beer and three whiskies. His other offences were taking and driving away a car, driving whilst drunk, driving dangerously, driving without insurance, without a supervisor and without "L" plates. The case is reported only briefly and we have no information about the details of this youth's offences. It seems fortunate

that no other road user (other than the owner of the car which he took) was affected by his misdeeds, which might well have resulted in a most appalling accident. He pleaded guilty to all seven offences. The total of the fines imposed is substantial enough to impress upon him that conduct such as his merits, and must receive, adequate punishment, and the two years' driving ban will give him time to learn to behave in a more responsible fashion. His parents, if living, or some responsible relative or friend should try to make sure that he really does appreciate not only how serious his offences were but how utterly foolish such conduct was from his own point of view. It is no easy task for a court to decide how best to deal with such an offender not only in order to protect the public but also with the object of protecting him against himself. If he was placed under supervision pending the payment of the fines (we have no information on this point) perhaps the probation officer responsible for his supervision may be able to help him to see the error of his ways.

Police and Public

We wrote recently about this important matter and we return to it now to consider another aspect of it. It has been reported in the press that the superintendent of police at Banbury has issued a public appeal for 30 or more suitable men aged over 25 to join the ranks of the special constables. It is said that their numbers have been so reduced by retirements that there is great need for extra recruits.

In most of the chief constables' annual reports which are sent to us we read of the useful work done by the special constabulary. There can be no doubt that here is an excellent way of fostering good relations between the regular police forces and the public. If members of the public are prepared to give up some of their leisure hours to service in the ranks of the "specials" they will have the opportunity to see things from the policeman's point of view and to appreciate his difficulties. In this way they will be able not only to help the police by doing duty as "specials" but also to assist in fostering better relations between the police and the public at large by explaining the policeman's point of view to any of their friends and relations who may be inclined to express "anti-police" views. We hope that not only the superintendent at Banbury but also any other chief officers of police who are short of "specials" will get all the recruits they need. It is a job of work which is well worth doing and is of real value to the community.

Debtors in Prison

Imprisonment for debt in its old form was abolished nearly 100 years ago, but there are still many men who are sent to prison because they have not paid their debts. The point is that no one is committed to prison for a civil debt unless the court is satisfied that he could have paid it and has failed to obey the court's order to do so. Probably most of those who undergo imprisonment for debt are unable to pay at the time of committal, but have neglected to do so when they were able.

The Guardian of September 8 contained some surprising statistics on this subject. It is stated that the number so committed to prison has increased tenfold in the past 10 years. In many cases the issue of a warrant is suspended in order to give the debtor a chance to pay, but there remain those who cannot and those who will not.

Most of the figures given in *The Guardian* evidently referred to county court proceedings, but, as the article states there are also committals for various kinds of debt by the magistrates' courts. In 1949 says *The Guardian*, 66,430 judgment summonses were taken out, which resulted in 29,355 committal orders being issued. The majority of these debtors came to some terms with their creditors, but 445 did not and were committed to prison. Of these, 125 were released before the full term was served. By 1957 the number of judgment summonses had risen to 212,786 and the number of committal orders to 85,959. The number of debtors who were committed to prison was 2,539, to which a further 140 must be added under a new form of contempt introduced by the Administration of Justice Act, 1956, in respect of a debtor's refusal to attend the hearing or give evidence as to his own means. Last year this total had risen to 4,160, although the number of committal orders had fallen to 76,714.

Hire Purchase

The Guardian comments "the increase is a mark not of greater severity on the part of the courts but of a greater number of defaulting debtors . . . a great number follow judgment summonses in the county courts in respect of defaults on hire purchase payments. When hire-purchase applied only to durable goods the hirer could meet default by recovering the goods. The enormous business now done by clothing clubs on credit cannot cover its risks in this way. Anyone concerned with matrimonial cases in the magistrates' courts knows how often debts incurred on clothing, as well as on furniture and television sets, figure in the reckoning of the assets and liabilities of a couple parting company. Not infrequently, quarrels over the amount of debt incurred have contributed to the rupture."

Reinstatement after Conviction

At one time a difficult problem for probation officers and others associated with the welfare of men and women who had been convicted of crime used to be that of finding employers willing to give them a chance. When unemployment was widespread, it was not surprising that employers chose those with unblemished characters rather than those whom they knew to have been dishonest.

Today, we believe, this is far less of a problem in most areas and many employers are willing to take on men who have been recently convicted, and even ready to reinstate those who have robbed them. We are glad to note this tendency. It is in part due to a greater realization of the need for treating ex-prisoners and probationers with humanity as a means of rehabilitating them, but we fear that this is not the only motive, and perhaps not always the principal one. Labour is, in many trades, in great demand in these days of full employment, and so an employer is prepared to take some risk of employing a man with not too good a character, and if he is a really useful man he may reinstate him straightway after the court proceedings.

This certainly gives a man every chance, and on the face of it this is a good thing. At the same time, one cannot ignore the fact that if it is realized that loss of character does not seem to matter much then one of the greatest deterrents to dishonesty is weakened if not removed. Employers used to be occasionally asked by the court, in exceptional circumstances, if they could consider reinstating a man if the court dealt leniently with him, and the answer, not infrequently, was that the employer dare not do this, because of the bad effect it might have on the rest of the staff. What it comes to, it seems, is that though we do not want to make the way of transgressors too hard, we must guard against making it too easy.

Appeal Against Refusal to Issue Driving Licence

Section 5 (1) of the Road Traffic Act, 1930, requires an applicant for a driving licence to make a declaration whether or not he is suffering from any such disease or physical disability as may be specified on the form of declaration or any other disease or physical disability which would be likely to make him, as a driver, a source of danger to the public. Section 5 (2), as originally enacted, required the licensing authority to refuse to grant a licence "if from the declaration it appears that the applicant is suffering from such disease or disability as aforesaid," and if the disease or disability is one prescribed in the Motor Vehicles (Driving Licences) Regulations, 1950 the applicant has no right to apply to be tested to see whether, after all, he can safely be granted a licence. The Act of 1956 added to s. 5 (2) of the Act of 1930, after the word "appears" in the passage quoted above, the words "or if on inquiry into other information the licensing authority are satisfied," and we shall discuss in this note one effect of this addition.

Section 5 (5) of the Act of 1930 gives to a person aggrieved by a licensing authority's refusal to issue (or revocation of) a licence the right to appeal to a magistrates' court against the refusal and on the hearing of such an appeal the court may make such order as they think fit and their order is binding on the licensing authority. It was held, while s. 5 (2) was in its original form, that there was no appeal against the refusal if it was based on the fact that the applicant was suffering from a prescribed disease or disability (*R.* v. *Cumberland JJ., ex parte Hepworth* (1931) 95 J.P. 206). So far as we are aware it has not yet been authoritatively decided whether this case would apply when the refusal is based on the fact that the licensing authority *are satisfied on inquiry into other information* that the applicant is suffering from a prescribed disease or disability. On the whole we think that the case would be held not to apply in such circumstances. It is not unreasonable to say that if the applicant's own declaration shows him to be so suffering the licensing authority has clearly no discretion in the matter and the licence must be refused. But if the refusal is decided upon after the authority, in the exercise of their discretion, have stated that they are satisfied that applicant is so suffering the applicant may well be aggrieved and it is reasonable that he should be able to appeal.

Our attention has been drawn to this matter by a correspondent who refers to a case in which a magistrates' court decided to allow a man to have a licence after the licensing authority had refused it on the ground that they were satisfied that he was subject to, or liable to suffer from, epileptic fits. Medical evidence was called by the applicant which showed that he had previously had attacks which had been epileptic and that the applicant's liability to such attacks was higher than average. He was not, however, suffering from the disease of epilepsy. The medical witness admitted that there could be a brief attack of which the patient might be unaware and that if such an attack occured while the patient was driving the consequences could be serious. He was not aware that the applicant had suffered from any such attack.

This is a difficult type of case for a magistrates' court to have to decide, particularly in these days when it is so highly important to do nothing to add unnecessarily to the dangers of the roads. Many magistrates might well feel that they should err on the side of safety by refusing to authorize the grant of a licence if there is *any* doubt on medical grounds that the appellant before them can with certainty be said to be a fit person to drive on the roads as they are to-day.

Markets and Licensed Hours

The decision in *R.* v. *Bungay Justices, ex parte Long* (1959) 123 J.P. 315, turned upon the Licensing Act, 1953 and not upon the law of markets. We do not suppose the point decided is likely to occur in many towns, but where it does the decision will show magistrates what is their proper course. Briefly stated, the facts were that the town of Bungay had a market place in which a cattle market had been held every Thursday. This had fallen out of use 22 years ago. On Thursdays one stallholder sold fruit, and on every day of the week a fish stall was set up. There was a toy stall before Christmas and occasional stalls for charity. At the time when the cattle market was still held, public houses near the market place were allowed to keep open by virtue of a general exemption granted by the magistrates, under what is now s. 106 of the Licensing Act, 1953. When buyers and sellers ceased to attend the cattle market, farmers and commercial travellers continued to do business in the neighbouring public houses. This was no doubt convenient, and the justices evidently considered it to be in accordance with the spirit, at least, of s. 106—treating the farmers and commercial travellers as being, in the words of that section, a considerable number of persons attending the public market. This happy state of things was disturbed, when a new licensee applied for a general order of exemption on the same ground. This was granted by the magistrates against police opposition, and the superintendent of police then took the matter to the Divisional Court. The Court had no hesitation in finding that the meetings in the public houses did not in themselves constitute a public market. As the public market was no longer being held, the magistrates could not properly find that a number of persons were attending it, and the statutory basis did not therefore exist for the general order of exemption. Neither the magistrates nor the publicans were represented before the Divisional Court, so there was no argument. Readers interested in the law of markets may regret this. It seems strange that the report of the Royal Commission on Markets, published in 1891, mentions in its list of Suffolk markets a commodity market held at Bungay on Thursdays, originally owned by the Duke of Norfolk, and at the date of the report vested in the town reeve and feoffees, but that the cattle market is not mentioned. On the other hand *Kelly's Directory* of Suffolk, in the edition of 1937 (the year when according to the report of the recent case the market was discontinued) does speak of a Thursday cattle market. We assume, therefore, that this market had a lawful origin and was being properly held. Nothing was said by counsel representing the police to suggest that there had been a forfeiture. In law, therefore, the owner of the market rights could resume holding the cattle market at any time if he could persuade buyers and sellers to resort to it, and there would then be persons attending, for whose accommodation it might be desirable to keep the public houses open. We do not, however, suggest that the decision of the Divisional Court failed to give effect to the purpose of the Act of 1953. We are content to accept the view that s. 106 is designed to deal with a state of facts, and not to provide for conditions which in law might come into existence. There does, however, seem to have been a possible legal point waiting to be argued, if the local licensed victuallers had thought it worth while to be represented.

THE FUTURE OF THE PROBATION SERVICE

By W. CLIFFORD

It is in keeping with the role of the probation officer as the court social worker that he should also be responsible for matrimonial conciliation work, investigations as to means, the supervision of persons fined, escorting to institutions, the after-care of prisoners and of borstal licencees and, in some areas, adoption inquiries. Many of these duties have naturally accrued to the probation officer because of his special position in the administration of the law. On the other hand it is frequently emphasized that the courts are dealing with anti-social behaviour symptomatic of our general social problems. To what extent does it help, therefore, to have a special officer for this work at the courts—apart, of course, from the simple convenience of having a link with other social services? There are probation officers who regard themselves fundamentally as social workers, their court work being but one aspect of the work for which they are trained. Others favour the striped trousers and formal black jacket and regard themselves essentially officers of the court with social work as but one aspect of their special legal responsibilities.

Is probation work social work with special reference to the court or is it court work with special reference to welfare? The answer appears to have been given by the training of officers primarily as social workers. But probation, if social work, is a very specialized form of case work. It has to be carried out in an authoritative setting, usually within a fixed period and the probation officer seems to carry a more direct measure of responsibility to the community for the offenders placed in his care than is the case with other social workers and their clients.

It must be recognized, however, that similar arguments have been used to justify a number of other specialized social welfare services which have grown up over the years to meet special needs. It is held, for instance that an almoner needs a greater knowledge of medicine and hospital practice than other social workers, that a child care officer has obvious and rather special responsibilities in the foster or residential care of difficult children, that psychiatric knowledge marks off the child guidance social worker from her colleagues in other fields or that personnel work in industry needs to be related to employment and to the special circumstances of a particular industry.

It would be foolish to deny that each of these fields of social work has its own special approach: it would be equally foolish to pretend that the differences are sufficiently important to imply *necessary* separation. These services are divided in the United Kingdom because of the haphazard way in which they developed. They are not divided in a number of other countries including several of our colonies. The general purpose social worker doing work, almoning, child care, prison after-care, even mental after-care in a single case-load is now widely used with considerable advantage.

It becomes dangerously easy to sub-divide social work into a number of highly technical departments, each having perhaps a loose relationship with the others yet each maintaining a distinct function of its own. The drawbacks of this approach in duplication of effort, overhead costs, and not least in the confusion for a client faced with a battery of different types of social workers are obvious. A matrimonial upset which disturbs the children and leads to delinquency in the boy and, say, promiscuity in the girl can bring down at least three different social workers on the heads of the unfortunate family—and the number can increase with the problems. The need for a more synoptic view explains the family welfare agencies and the family service units which recognise that social problems are symptoms of domestic maladjustment and indivisible. In some areas there are now consultative committees of social workers to reduce overlapping and to pool information. These serve to mitigate the unfortunate divisions in practice but they are no substitute for integrated social administration. Even our Welfare State has gone too far in its tendency to provide for individuals rather than families and in the way it has sectionalized the provisions into categories rather than communities.

It is against this background that the future of the probation service must be considered. We must be careful not to build up a highly individualistic service which could suffer from its own insularity. It is perhaps too late to hope to integrate social case work services in the United Kingdom and perhaps too early to suggest that even whilst separate they could be brought under a common ministry of the governments. But probation work could be rationalized with a view to greater fusion of similar services. Surely it is better to call the probation service a "Delinquency Service" and to use probation officers for a variety of works under this heading. They do much of the after-care work already; why should they not also provide prison welfare officers and be made entirely responsible for after-care? If the service were extended they could do a great deal of preventative work and co-operate more closely with the police in cautioning and following up incipient delinquents. They could also ensure that after-care began when a person was committed and could do intensive work on the home in preparation for home leave or release. Hostels and homes could also be brought within the service as well as approved schools. In the course of a person's service he would have the opportunity of residential as well as outside work and the extra administrative posts would provide for the older officers to be accommodated in less active work. It is unrealistic to fix the retirement age at 65 and expect an officer of this age to supervise adolescents on probation.

Within a more flexible service of this kind there would be opportunities for advancement and a chance to use officers on the cases for which they appeared to be better equipped. Court work would still be theirs but there would be a case for separating the matrimonial and adoption work. Adoptions fit better into the child care services and matrimonial work might become part of family welfare services or part of the new service being pioneered by the probation service with welfare officers at the divorce courts. It is true that many officers would not like to lose the work of domestic reconciliation but whilst it is recognized that this often provides a valuable background to the probation or delinquency work, the same argument could be used for integrating all social work, which, however desirable, does not seem feasible yet.

Whatever is decided, attention must be given to the status of probation officers. In the scramble for better paid jobs since the war the status of the probation officer has fallen.

Training has been improved and the quality of case work deepened but there is something very seriously wrong with a service which in the recent past has been obliged to take in people from the labour exchanges without the proper training or experience. The National Association of Probation Officers should be helped financially to establish an Institute which could provide intensive case work training and maintain standards throughout the service. England has no School of Social Work (as distinct from social science) on the pattern understood by America or Israel. An Institute could, by close liaison with the universities, pioneer such a project. If our crime rate means anything at all it surely means that we need to concentrate more on the delinquency aspect of social work.

On the administrative side there is much to be said for a unified service for the country as a whole, the courts being supplied with the officers they need instead of recruiting their own too small local services with limited prospects. There are many good officers who cannot advance because of the domestic upheaval involved, not to mention the costs. With appropriate allowances and improved prospects for the right people a national service would be able to surmount some of these difficulties. The present Probation Division of the Home Office might become executive for the country as it is now for the London service.

These are but general thoughts on a large and complicated subject. The difficulties involved in making any such changes are immense. But the probation service has proved its worth over a half century of devoted work and deserves consideration even though it does not have great strength and therefore great bargaining power.

THE HOUSING ACT, 1957 AND THE RENT ACT, 1957

We published at p. 183, *ante*, an article under this title by the town clerk of Windsor, discussing the relation between these Acts. He has since informed us of an interesting judgment upon this subject delivered in the county court at Winchester, *viz*. *Welch and Newman* v. *Winchester Corporation*. The appellants, as executors of Frank Welch, owned a dwelling-house which had been subject to the Rent Acts, and so was affected by the Rent Act, 1957. They served a notice of increase of rent under that Act, in response to which the tenant served notice of defects of repair in accordance with para. 3 in part II of sch. 1 to the Act. This happened in August, 1957. In October, 1957, the city council upon a representation by the medical officer of health served upon the appellants a "time and place" notice under s. 16 of the Housing Act, 1957, in which they stated that they were satisfied that the house was unfit for human habitation and was not capable of being rendered fit at reasonable expense. A week later the tenant applied to the council under the schedule to the Rent Act, 1957, for a certificate of disrepair in consequence of failure by the appellants either to remedy the defects set out in his notice of August, 1957, or to give any undertaking to remedy them. In the latter part of October, 1957, there were accordingly two parallel procedures in motion in respect of the same house; at the end of that month the council served on the appellants a notice of intention to issue a certificate of disrepair under the Rent Act, 1957, in accordance with the tenant's application to them. In this notice the council declared themselves satisfied that the defects ought reasonably to be remedied having due regard to the age, character, and locality of the premises. The contrast (if not a contradiction) is obvious between this notice and their notice under the Housing Act served three weeks earlier, in which they had said that the house was not capable at reasonable expense of being rendered fit for human habitation. Negotiations followed between the appellants as owners of the property, and the committees of the council concerned, as a result of which there was an agreement (not perhaps a formal and binding agreement), that the work set out in a schedule prepared on behalf of the owners' surveyor would be carried out with some additions suggested by the council's officials, and would then be adequate both to render the house fit for habitation and to remedy the defects which had led to the council's notice of a proposal to issue a certificate of disrepair under the Rent Act, 1957. For some reason which is not clear upon the papers before us, this agreement broke down, and in March, 1958, the council made the closing order which was the subject of the appeal, heard by the learned county court Judge some 12 months later

The effect of his judgment, stated briefly, is that the words "ought reasonably to be remedied" in para. 4 (2) in sch. 1 to the Rent Act, 1957, are not to be construed as the converse of the words "is not capable at reasonable expense of being rendered so fit" in s. 16 (1) of the Housing Act, 1957, because the standard is different. Under the Housing Act, the word "reasonable" refers to economic considerations; under the Rent Act the adverb "reasonably" is to be construed in relation to the age, character, and locality of the dwelling. Moreover, the parties concerned are different: under the Housing Act they are the council and the landlord; under the Rent Act they are the tenant, the council, and the landlord. The purpose again is different. Under the Housing Act the purpose is to procure the closing or demolition of an unfit dwelling; under the Rent Act it is to prevent the landlord from obtaining the benefit of a higher rent when he has failed to keep the house in proper repair. All this is rather subtle, but some subtlety is unavoidable because of the persistance of separate provisions using much the same language (both Acts use the word "reasonable" and speak of standards of repair), and because both Acts must, if possible, be made to work. In making them work it is desirable to avoid unnecessary hardship on the property owner, as well as giving the tenant whatever protection is due to him under the Acts. It was suggested on behalf of the owner that the town council, by serving a notice of intention to issue a certificate of disrepair, had estopped themselves from proceeding under the Housing Act to make a closing order. The Judge did not accept this view, but upon the facts he indicated that if the defects set out in the document under the Rent Act, 1957, were remedied this would in fact remedy also the defects which were the ground for the closing order under the Housing Act.

So much for the point of law. Turning to the facts which the learned Judge analysed at length, he concluded that the house had been at all material times unfit for habitation, but he also held that it would be rendered fit for habitation if the works included in the agreed schedule at the stage of the certificate of disrepair were carried out, and that this could be done for about £400. He did not accept the contention that this figure would be hopelessly uneconomic. Being of opinion that if this amount of money was spent it

would be economically feasible to repair the house and to obtain from it a proper revenue in future, he held himself to be precluded by s. 16 of the Housing Act, 1957, from confirming the closing order.

The result may be proper in this case. The moral for local authorities seems to be that it is undesirable to proceed under the Housing Act, 1957, for the purpose of obtaining a demolition order, at the same time as they are considering the issue of a certificate of disrepair under the Rent Act, 1957. By running the two procedures in double harness, the local authority will ordinarily be producing extra trouble for themselves and obviously causing embarrassment, to say the least, for the property owner, and even for the sitting tenant whom it is the local authority's desire to protect.

CAN BUILDING BYELAWS BE KILLED?

On January 21, 1959, the Minister of Housing and Local Government answered a question in the House of Commons about local building byelaws. The suggestion was that these should be replaced by building regulations made by the Minister which should apply throughout the country. A similar replacement for Scotland was already before Parliament and it became law on April 30, in the Building (Scotland) Act, 1959. The Minister pointed out in his reply that the change could not be made without legislation substantially altering the Public Health Act, 1936, but he undertook to consult the local government associations and other interested bodies. This was done in a letter dated February 12. So far as we have seen from published information, the considered replies to that letter have not yet been sent by all those who were consulted, and it may be that in some quarters the suggestion will be regarded as a sinister attempt to deprive local authorities of power. We do not regard it in this light. The suggestion is not new. It was considered by the Departmental Committee on Building Byelaws which was appointed in 1914, and presented its report, Cd. 9213, in 1918 after a long delay caused by the first world war. That committee rejected the suggestion, but reasons which may have been valid 40 years ago do not necessarily hold good today. The committee (we think it not unfair to say) was rather heavily weighted by local authority representatives, and the main reason which the committee gave, for maintaining control by local byelaws in preference to central regulations, was that local authorities would be more likely to enforce byelaws which they had made themselves than to enforce regulations made by the Local Government Board or a Minister. Since that time, however, local authorities have acquired more experience of enforcing centrally made regulations as well as Acts of Parliament, some of which on other subjects are closely allied to byelaws which they can make or used formerly to make themselves. There is no reason at the present day to suppose that they would be more alert or less alert to enforce one type of enactment rather than the other.

The making of byelaws controlling the construction of buildings began with the Local Government Act, 1858. The power was expressly given in substitution for two sections in the Public Health Act, 1848, which had enabled the local authorities set up by that Act to control the construction of buildings at discretion for certain purposes. The reasons prompting the Government and Parliament in 1858 to make this change can only be conjectured; whatever the reasons, it was still not contemplated that the powers should be exercised uniformly throughout the country. It was accordingly natural that local byelaws should be the method chosen for empowering the local authorities of that day to impose restrictions upon building, and several other types of restriction on the freedom of the public which were then novel, once it was decided that the restrictions were not to be discretionary. The Act of 1848 was not everywhere in force. Like the Clauses Acts of the previous year, it consisted of groups of sections designed for adoption in those places where the local authority thought new powers necessary. The innovation in 1848 was that the parts of the Act thought to be needed in a district could be put in force by the order of a Minister or central board, without its being necessary to go to Parliament for the purpose, as it was with the Clauses Acts of 1847. Although these Acts were promoted by a Whig or Liberal Government, and can be properly regarded as among the first fruits of the Reform Act, 1832, Parliament did still recognize what the great opponent of the Whigs (attacking the Poor Law Amendment Act, 1834) had called the territorial constitution of England.

Local authorities were thus at liberty to have the Public Health Act, 1848, put in force or not according to their view of local needs, and the same applied to the Local Government Act, 1858. Where the sections of the latter Act which were concerned with building and some other matters were among those put in force, the local authority was still at liberty to make much or little use of those powers by way of making its own byelaws.

Although the byelaw making power of this Act was in terms new, and (particularly) introduced a feature which in course of years was to show itself of great importance, namely the requirement of confirmation of local byelaws by some outside authority, the power of making byelaws was not itself altogether new. The courts had recognized for centuries that every corporate body had an inherent power to make byelaws binding its own members, though there was doubt how far those byelaws were enforceable by any method except deprivation of privileges attaching to membership of the corporation. What is certain is that a corporation could not merely, by virtue of having been incorporated, impose penalties recoverable even against its own members by any summary process. Still more obviously it could not impose penalties upon members of the public who were not members of the corporation. The new bodies called into existence to administer the Public Health Act, 1848, and the Local Government Act, 1858, could therefore not have enforced the byelaws they made under the latter Act unless special provisions for enforcement had been included in the Act, and it was this departure from the older law, by enabling local authorities to enforce byelaws against all persons within their jurisdiction, which made it logically necessary to introduce the requirement of confirmation by a superior authority. There was (it is true) a parallel method of producing a rather similar result by enacting that byelaws should take effect unless disallowed within a stated time by a superior authority: this alternative was applied by the Municipal Corporations Act, 1835, to byelaws made by the councils or boroughs under that Act, and was repeated in the Municipal Corporations Act, 1882, and (for county councils) in the Local Government Act, 1888, but it was never extended to the Public Health Acts, and in 1933 the requirement of confirmation was applied to all byelaws of local authorities.

Meanwhile, byelaws controlling the construction of buildings with which we are here concerned were again authorized by the Public Health Act, 1875, in slightly wider terms than those of the Act of 1858 and could thereafter be made by all urban sanitary authorities, that is, the authorities now known as the councils of boroughs and of urban districts, while those now known as the councils of rural districts were enabled to obtain the same byelaw-making power by application to the Local Government Board for an urban powers order. This was optional, and even in boroughs and urban districts it remained optional for the local authority to exercise the power. Soon after the passing of the Act of 1875 the Local Government Board set about the drafting of model byelaws on several subjects, of which the control of building was the most important. The purpose of the model byelaws was to provide local authorities with precedents, which had been worked out by the board's advisers in consultation with outside professional bodies, and were thought to embody such rules as could properly be enforced by legal process, for the purpose of securing conformity to recognized building standards of that day. It may be of interest to recall that Mr. W. G. Lumley, Q.C., was at this time the legal adviser to the Local Government Board (*see* the biographical note prefixed to the 12th edition of *Lumley's Public Health*); the actual draftsman of the model byelaws of 1877 was Mr. A. D. Adrian, then a young barrister newly appointed junior counsel to the board, who was father of Lord Adrian, O.M. Mr. Adrian's exceptional gift of lucidity was notably displayed in the language of these first model byelaws, although their substance was inevitably derived in part from local statutes then in force in the area of the Metropolitan Board of Works and in some large provincial towns. Those statutes were already beginning to be out of tune with architectural practice, but it is right to say that Mr. Adrian, and the architectural advisers of the Local Government Board, had the benefit of close collaboration with the Royal Institute of British Architects. It was inevitable also that by the end of the century these first model byelaws should be subjected to criticism, on the ground that they were too detailed and drastic for use in country places, and indeed in towns apart from large industrial areas. These criticisms were strengthened by the fact that the board had conferred urban powers for making byelaws fairly freely between 1875 and 1890, and up to the end of the century had made no special provision by way of model byelaws for the rural district councils who had obtained limited byelaw-making powers by the Public Health Acts Amendment Act, 1890. In 1901, however, the Local Government Board opened a fresh chapter by issuing a series of model building byelaws especially for rural districts, and in 1905 issued experimentally an intermediate model, intended originally for rural districts which were becoming urban. After 1910, the Board set themselves energetically to the task of keeping their three series of model building byelaws up to date, and of using persuasion (in the absence of statutory power) to induce local authorities which had 19th century byelaws to bring them into line with 20th century building practice. The story up to the outbreak of the first world war is told in the report, made in 1918, of the departmental committee above mentioned, which was presented to the President of the Local Government Board on the eve of the abolition of his office. His successor, the Minister of Health, obtained power from Parliament in 1923 to require the bringing up to date of building byelaws (with a power to revoke those not brought up to date) and, in a few years time, the process of modernizing was all but complete throughout the country, so far as the law of building was contained in byelaws and not in local Acts of Parliament. It remained true that no local authority was under an obligation to make byelaws for controlling building. Some had never done so; some had not made new byelaws in place of byelaws revoked by the Minister under the power he obtained in 1923—if a local authority did make byelaws these did not take effect unless confirmed by the Minister and, if the Minister became satisfied that byelaws in force imposed unreasonable impediments upon building, he had power to revoke them. But the fundamental fact was that local option still existed, as regards the making of building byelaws.

This position was reversed by the Public Health Act, 1936. Instead of leaving to local option whether byelaws for controlling building should be made, as it had been left since 1858, Parliament (when again re-enacting the power) now went on to enact that if the local authority did not make byelaws the Minister of Health might require them to do so, and in default might make byelaws which would take effect as if made by the local authority. Lord Addington's committee, which prepared the Bill for that Act, did not perhaps fully appreciate that a fundamental change was being recommended by them; one reason they gave in their report, Cmd. 5059 of 1936, was that there were sections of the new Act which would not work unless the local authority had at any rate made byelaws requiring the deposit of plans, because the local authority had to have plans before it in order to reach a decision on some matter left by the Act to its discretion. It would have been possible to make byelaws requiring the submission of plans, and to have no more than a very few simple byelaws for other purposes, as was the general practice in rural districts when the committee reported, but the new Act did not work out this way. Lord Addington's committee expressly commended the issue of those model series; they followed the Departmental Committee of 1918 in saying that all local authorities should have the same powers, but thought the powers should be exercised differently in different types of district. However, after the passing of the Act of 1936 the Minister of Health decided upon a change in the practice with regard to model byelaws which had been followed by his predecessors since 1901. Instead of having different model series designed to be suitable for different types of district, he issued a model series for the purposes of the Act of 1936 which made no distinction between the rural districts, districts of intermediate type, and boroughs large or small, but was intended to be available to all local authorities. This did not mean a return of the 19th century rigidity, because the new single series of model byelaws contained a variety of clauses designed to meet the circumstances of open development, as well as those arising in the congested portions of the larger towns, but it did mean that local authorities of the less congested areas were encouraged to adopt all the byelaws thought appropriate to the more congested. In conformity with a recommendation of the departmental committee of 1918, the Act of 1936 also set a time limit on the continuance of building byelaws, so as to ensure that these would be kept up to date by the local authorities who made them. For practical purposes, therefore, building byelaws throughout the country have now been uniform for 20 years and have closely conformed to the model series.

In fairness it should be said that between 1910 and 1936 the urban model series, as well as the rural and the intermediate, had been progressively modified so as to eliminate old fashioned requirements, of the sort which had produced complaints in the first decade of the century. It would be

true to say that the chief difference between the urban model series and the intermediate model series as they existed just before the Act of 1936 was that, where the intermediate series had been followed, the local authority was relieved of trouble and expense in supervision of industrial buildings—for which in any event the building owners would normally employ competent professional advisers. It follows that the change of policy after 1936, when the Minister decided to have a single series of model byelaws and to encourage its adoption in all districts, meant increased expense and trouble for local authorities of the more sparsely populated area, rather than a burden upon building and development. It is difficult to be quite sure about this, because the full effects of the change in policy had not been felt before the second world war broke out in 1939, while there came in 1943 the biggest change which has ever taken place in this country in the relations between developing owners and public authorities, in that for the first time, by the Town and Country Planning Act, 1943, it became compulsory to secure the permission of a public authority for the development of land or the erection of a building. With the duplication of control, arising from the fact that the local authority (which received plans for purposes of the Public Health Act, 1936) was in most areas not the planning authority for purposes of the Town and Country Planning Act, 1947, there was no longer any chance of freedom for the builder, and it became relatively unimportant to him whether there were building byelaws.

In the situation now existing it seems reasonable to conclude that property owners and builders will benefit, if the ground hitherto covered by building byelaws is brought within regulations of a Minister, and that local ratepayers will be benefited also, in relief from the cost of making, printing, and advertising amending byelaws, where amendments are necessary to keep pace with modern practice. As the law stands under the Act of 1936 at present, the Minister can (and does) keep his model byelaws up to date; he can, and sometimes does, inform local authorities by circular of important changes, but it then rests with each local authority to alter its own byelaws to agree with the model series. Some delay is unavoidable; there is scope for argument, and at best there is expense, multiplied by the number of local authorities which have to move.

It can be assumed that, like the model byelaws as these have evolved in the course of nearly 50 years (taking 1910 as the beginning of the process of continuous revision) the Minister's new regulations will be so drafted as to permit variations of building practice to cover local or regional differences. Varying climatic or other particular local conditions may necessitate different treatment in such matters as foundations, flood precautions, or the danger of subsidence. Special provisions upon these and other matters are familiar, and there would be no greater difficulty in such provision, or about the use of local materials, than there is now in framing model byelaws.

Builders, designers, and suppliers of materials would be helped, especially firms and designers who operate over different parts of the country, who would thus avoid the complications that arise through having to read and interpret individually-made byelaws, to ensure that they are designing their works in accordance with the requirements of local control. Further, as was pointed out by the Departmental Committee in 1918, standardization of materials is encouraged by generally uniform requirements. It was also indicated in the report of the Committee on Building Legislation in Scotland that central building regulations could be taught in technical schools and colleges throughout the country, if their application became national. It may be too much to expect local authorities who have stood outside the system of byelaws under the Public Health Acts, 1875 to 1936, to come under the Minister's regulations and abandon local Acts controlling building, but the existence of a national series of building regulations might have some moderating and modernizing influence, even upon these authorities. In commenting upon the suggestion of a national series of regulations, the County Councils Association deprecated including in it provisions resembling those now existing (by virtue of local Acts) in London and some other large towns, but of this there is, we feel sure, no danger. There could be supplementary regulations, if it was still thought desirable to have peculiarly drastic provisions in a few large towns, and the existence of national regulations for all ordinary building operations might have more influence than the existence of model byelaws has had, towards modernizing restrictions even in those towns, in matters dealt with by the regulations.

THE HIGHWAYS ACT, 1959

(*Continued from p. 541, ante*)

Section 209 is directed against a familiar dodge for avoiding payment of the cost of private street works. Partly perhaps because of changing methods of development as well as of some statutory provisions in local Acts, upon which the present section is based, the practice has been less common for a generation past than it was in the 19th century. Many readers, however, will have come across instances where the owner of land, beside a road which was likely at some time to be made up as a private street, has conveyed a narrow strip of frontage to a person who covenanted to permit access if desired across that strip to the land retained by the vendor. Then, when the local authority made up the street, the frontager would be the owner of the narrow strip and, as he was a man of straw, the local authority were unable to recover the proper proportion of the cost. This device was not completely successful where the land behind the strip was developed in such a way that it had direct access to the private street (otherwise than by permission of the man of straw) because under s. 10 of the Private Street Works Act, 1892, there was power to include in the apportionment premises which had access to the street through a court, passage, or otherwise although they did not abut on it. The device was, however, effective where it was applied to a flank frontage along the private street, access to the premises being derived from a street already repairable by the inhabitants at large. Lord Reading's committee were not satisfied that the local Act sections aimed at preventing this device were wholly effective, and s. 209 has been redrafted accordingly. On the face of it, the section does what is required where the private street is made up and the apportionment served before the back land has been disposed of by the person who conveyed the front strip to the man of straw. The local authority can then obtain an order for payment of the expenses of the private street works by the transferor of the frontage, and this order can be made a charge binding successive owners of the back land. The section can however not be applied, if the person

who transferred the frontage to the man of straw has also transferred the back land to another purchaser, before the private street is ready to be made up. The section provides only for the order of the magistrates to be made against the transferor; if he has already parted with all interest in the property, a charge upon it cannot be imposed against his successors in title. Local authorities may consider the section defective in this respect, but the blame does not rest upon the draftsman. Lord Reading's committee in their note upon the clause (then numbered 208) say that they do not think the local Act section on which they were basing themselves was intended to apply, where the person who had transferred the frontage had disposed also of the back land before any apportionment was made, and, in a consolidation Bill, they did not feel justified in altering its effect to meet this point.

Section 210 reenacts the power of a local authority making up a private street to contribute to the cost from their general funds, with a verbal amendment intended to secure that where this is done a proportionate reduction shall be made in favour of all owners charged as frontagers upon the street. A new subsection contains a provision which has occurred in several local Acts in the last 10 years, empowering the street works authority to bear the whole or a proportion of the expenses which otherwise would have to be charged on the owner of a rear or flank frontage abutting on the street. Exercise of the power of this subsection is to be at the discretion of the street works authority. It may be expected that they will treat premises differently, according as the rear or flank frontage is so designed as to make, or not to make, appreciable use of the private street.

Section 211 is based upon provisions in the earlier law, which enable a local authority to grant a charging order upon premises in respect of which the expenses of private street works had been paid, in favour of a person who had advanced money for such payment. There are minor amendments to get rid of gaps in the previous law.

Section 213 contains a rather complicated definition of the expression "private street" which, oddly enough, did not occur either in s. 150 of the Public Health Act, 1875 or in the Private Street Works Act, 1892, otherwise than as a compound adjective attached to the noun "works," although it has been universally used as a convenient description of the kind of highway to which those enactments refer. The remainder of the section comprises two pages of subsidiary, and complicated, definitions. Perhaps the most notable item in these two pages is subs. (3) enabling a street works authority, which has a local Act in force as well as the provisions of the general law in regard to street works, to choose in relation to a particular street whether the general or local enactment shall apply. It is, we think, regrettable that Parliament has not felt strong enough to abolish local Act provisions which overlap the provisions in regard to private street works of the Act of 1892. We have known hardship to small property owners to be caused by provisions in a local Act differing from those of the general law: it is at any rate something that, under this subsection, the street works authority will be obliged to inform persons concerned of their decision to proceed under one set of enactments or the other.

Part X of the Act contains provisions upon the acquisition, vesting, and transfer of land which are explained by a very long note in the report of Lord Reading's committee on cl. 213 of the Bill, now s. 214 of the Act. By reason of the piecemeal manner in which the existing law about the provision of highways has grown up, there is extraordinary duplication. Probably most land bought by local authorities for this purpose is at present obtained under the general powers of the Public Health Act, 1875. It is the powers of that Act which are the basis of part X of the Act of 1959. Further powers in the existing law occur in the Development and Road Improvement Funds Act, 1909, and in the Restriction of Ribbon Development Act, 1935. An important change in the provisions derived from the Act of 1875 is that the consent of a Minister is no longer required where a local authority propose to acquire land for purposes of a highway by agreement. This brings the powers of a borough council under the Act of 1875 into line with the position in a county. The change is not so far reaching as it might seem at first sight, because it will only be comparatively small purchases which the local authority will carry out from revenue. Where they borrow, loan sanction will still be needed in the ordinary way. The opportunity has been taken also to get rid of some complications occurring in the Acts of 1909 and 1935. The sections numbered 215 to 225 inclusive reproduce other provisions of the existing law about the acquisition of land for purposes of highways, and in particular the provisions about compulsory purchase. These interact with numerous provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, and the Acquisition of Land (Authorization Procedure) Act, 1946. The general provisions are in s. 222 while s. 223 contains special provisions for the acquisition of rights belonging to local authorities and statutory undertakers.

Section 225 contains restrictions upon a local authority's parting with land acquired for a highway. Briefly, the consent of the Minister of Housing and Local Government is necessary, and this consent has to be given by order, which is subject to special parliamentary procedure unless the local authority's proposal is to let the land for a term not exceeding seven years.

With s. 226 of the Act we come to a fresh subdivision of part X, which deals with the vesting of highways. As with some earlier sections, there are minor changes in the law designed to remove anomalies, but the pattern broadly speaking is that the property in a highway and its appurtenances shall vest in the authority responsible for its maintenance. There are special provisions for bridges, and for the transfer of property and liabilities on the change of status of a highway. Section 233 may be noticed as providing for extinguishment of the right to charge tolls. This right may be extinguished either by agreement or under compulsion, but compulsion for this purpose cannot be applied where a highway vests in the owners of a railway, dock, or harbour.

Part XI of the Act contains the financial provisions, beginning with advances by the Minister of Transport and Civil Aviation to highway authorities and, incidentally, a power for the Minister to spend money in his capacity of highway authority. It has to be read in connexion with the definition of the term "improvement" in s. 295 of the Act. Otherwise, this part of the new Act reproduces without apparent alteration the provisions of the existing law, about contributions by one public authority to another in respect of different classes of highway.

Section 243, which is the shortest section in the Act, gives power to a local authority to borrow money. This does not change the law, or excuse the local authority from the necessity imposed by s. 195 of the Local Government Act, 1933, to obtain the consent of the Minister of Housing and Local Government to the loan. Section 244 gives an express power to borrow on security of sewage works and plant. The reason for the intrusion of this power, which at first sight looks odd, is that there is a similar power in the Public Health Act, 1936, but that power depends upon older provisions which are now being repealed, so that s. 244 merely preserves the existing law.

(*To be continued.*)

CONFERENCES, MEETINGS, ETC.

ASSOCIATION OF TOWN CLERKS OF THE BRITISH COMMONWEALTH

The first presidential address of this association was delivered by Mr. Brian Porter, M.A., LL.B.(Cantab.), F.I.T.C.(S.A.), town clerk, Johannesburg. He said in part, of the system of local government in South Africa; that fundamentally he imagined there was not any very great difference in the framework of local government in the various countries represented by the association, and he thought he would be right in saying that local government has for some years been going through a fairly difficult time. It seemed to be a popular pastime to try and stigmatise it as being inefficient and antiquated and in South Africa this was possibly more so than in any other country of the Commonwealth. Johannesburg was particularly prone to these attacks and the reasons were not very far to seek. He did not think that actual inefficiency was the real cause but rather the fact that Johannesburg, in common with other large cities, frequently found that its local interest conflicted with national interests or at all events national policy. Such a clash of interest between the national government and the local government of the great cities was, of course, not confined to South Africa. It was natural that many policies adopted by local authorities in the main cities of a country would not be localized in their effect, and the government of the day had consequently a very legitimate interest in seeing that the repercussions of any action taken locally do not prejudice its own national policy. In Johannesburg, this clash of interest was more likely to occur frequently than in most other South African cities because it was the one important centre in the Union where the council was constituted on political lines, and the ruling or majority party in the council was the same party as the opposition or minority party in Parliament. The result was more and more control, or interference. In fact, in some of the functions carried out by the local authority, it was becoming more a case of local self-administration than local self-government. For example, in the sphere of non-European administration—and Johannesburg had a population which includes almost 600,000 natives or Bantu—the council may really be regarded as the agent of the Government and was bound to carry out Government policy, although, naturally it must administer this policy in its own way to the best of its ability.

Coming back to the general position, there can be little doubt that many of the allegations of inefficiency arose from the fact that there had been many differences of opinion between the Johannesburg city council as such and the two higher tiers of government, namely, the Province and the Government. Where the council wanted to carry out a certain policy, and either found it was prevented from doing so because of a higher veto or could only do so with every obstacle placed in its way, difficulty in making local decisions was bound to result, and this obviously did not improve efficiency. Be that as it may, a commission of inquiry into the system of local government in the Transvaal, in which Province Johannesburg is situated, was appointed as long ago as 1954. Its recommendations were still under consideration, but they appeared likely to be accepted by the Transvaal Provincial Council, even if in a slightly different form. If they were accepted, it would result in a material alteration of the present set-up. Johannesburg, for instance, instead of being controlled and run by a number of standing and special committees with fairly wide delegated powers and by the council itself as the supreme body, would in effect be controlled by an executive committee of five councillors elected on a proportionate basis still to be decided. This executive committee would have very wide powers and would be the only committee with any executive powers at all. The appointment of other committees from the remaining members of the council would be optional, but the proposal was that none of those committees would be anything more than purely advisory in character. The council itself would probably meet about six times a year but, as far as can be judged, it would be more of a debating society than a deliberating body and it would appear that those councillors not members of the executive committee would have little to do and would be unlikely to receive a real training in the art of local government. The executive committee members themselves would be paid a fairly substantial amount each month as, although their work will not be full-time, it is anticipated that it would take up a great proportion of their day.

In addition to this change in the structure of the local authority, there would be a compulsory appointment of a chief official known as the principal officer, who would receive a salary at least 10 *per cent.* greater than any other official. It appeared that this official may or may not combine the office of principal officer with, say, that of town clerk or treasurer or even city engineer. His duties, however, would be most extensive and he would be involved in the work of all departments. In fact, he would be the main if not the only recognized medium of communication between the executive committee and the various departments of the council. In a city such as Johannesburg, with 22 separate departments, it appeared unlikely that a principal officer, who will really be the city manager, would be able to combine his duties with the running of a particular department. Perhaps, however, the most important aspect of this appointment was that although the first of such appointments may be made by the council itself from one of its own officials, any subsequent appointments would be limited to persons approved by the Province. This clearly indicate a still greater degree of provincial control.

Mr. Porter said he had given this picture as he felt it might be of interest in showing you the trend of things in the Transvaal. These recommendations were, however, still under consideration and it was possible that important modifications may be agreed upon.

The Urban Revolution:

Johannesburg, which was nothing more than a mining camp 70 years ago, can now be included as one of the greatest cities of the world. Excluding Calcutta and Bombay it had he believed the largest population of any single local authority in the Commonwealth apart from Manchester and Birmingham, and the largest area apart from Brisbane. This tremendously fast growth—when he joined the service in 1934 the net rateable value of Johannesburg was approximately £70,000,000 while today it was over £500,000,000—had naturally brought many difficulties with it owing to our forefathers never having anticipated that Johannesburg would attain any degree of permanent importance, and we were now faced with very heavy expenditure in order to solve problems arising from traffic, housing, the removal and resiting of our produce market and abattoir and livestock market owing to inadequacy of space and so forth. It was incorrect to say, however, that these were really unique problems arising only from the unusually rapid growth of Johannesburg, because throughout the Commonwealth, as throughout the world, an urban revolution is bringing local government face to face with similar difficulties in regard to traffic, transport, housing and public services of all kinds. These difficulties in turn resulted in problems of finance, constitutional reform, domestic re-organization and town and regional planning. This was, of course, especially so in and around the major cities.

Dr. L. P. Green (Research Officer, Johannesburg) had pointed out that a century ago only the cities of Tokyo, Paris and London had over 1,000,000 inhabitants: today, there were at least 83 cities. In Great Britain, although 50 *per cent.* of the population had been urbanized by 1851, by 1951 the proportion had grown to 81 *per cent.* In Canada, the urban proportion rose from 29 *per cent.* in 1871 to 57 *per cent.* in 1951, and it is expected to increase to 75 *per cent.* by 1980. In South Africa, the urban proportion grew from 25 *per cent.* in 1921 to an estimated 50 *per cent.* in 1957, and to 80 *per cent.* of the white population. In Australia, seven major urban areas accounted for 56 *per cent.* of the total population by 1957, and some 70 *per cent.* were in fact living in towns and cities with over 2,000 people.

As a result of this accelerating revolution, the last decade or so has been marked by an increasing number of inquiries into city government. A Royal Commission on London's government commenced work at the beginning of 1958, and the entire structure of local government is now under review by two further Commissions, one for Wales and another for England. In Canada, Montreal and Toronto have both been given new metropolitan structures after careful inquiries. The Toronto Metropolitan Council was firmly established by the beginning of 1954 and is proving to be a valuable experiment in its field. Legislation has now been passed to permit the development of a metropolitan council for Greater Montreal, following the report of the Paquette Commission in January 1955.

In Australia, a Royal Commission set up in 1946 to investigate Sydney's local government resulted in legislation in 1948 for the amalgamation of the central areas and the regrouping of subur-

ban areas into 16 new municipalities. At the same time a Cumberland county council was formed as an *ad hoc* planning body for a wide region surrounding the city. Melbourne received a form of two-tier local government in 1956, when, after much local discussion, the Melbourne and Metropolitan Board of Works was given metropolitan jurisdiction. In New Zealand, an inquiry into the problems of Greater Auckland was begun by the local government commission towards the end of 1949. Although this inquiry was not completed, it was followed by the establishment of an Auckland Central Authority Steering Committee concerned with metropolitan problems.

In South Africa, a Commission of Inquiry was now examining the question of a Greater Pretoria and a thorough investigation of local government in the Transvaal was made by the Marais Commission between 1953 and 1957, which paid particular attention to the administrative organization of the larger authorities. In addition, a Treasury Committee (Borckenhagen Committee) on financial relations had been sifting evidence since 1957 on all aspects of local functions and finances throughout the Union, and was now turning its attention to problems of metropolitan government.

There was thus plenty of evidence to show that Commonwealth countries were responding to the challenge of the urban revolution, but there was little evidence of Commonwealth co-operation in the research needed to find the best solutions to the problems arising. At best, the response was piecemeal and unco-ordinated. We might learn a great deal more from each other than we do today and, as a first step, an exchange of information and ideas would be well worth while. As a second step, the studies sponsored by Professor Robson could be followed up in a comprehensive way. He himself pointed out that there is a very real need for much more intensive and widespread work in this field and that many more men and women should be trained to understand and investigate the political, economic, social, administrative and technological aspects of metropolitan development. In 1957, there were more than 20 research projects under way in the United States of America, supported by many millions of dollars from the great foundations.

These thoughts came from Dr. Green, who pointed out that the Commonwealth has virtually nothing to show in this regard. He asked whether money cannot and should not be made available from Commonwealth foundations for similar projects in this very important field of comparative government.

Provincial and National Aspects of Local Government in South Africa:

In South Africa each province—the Cape, Transvaal, Natal and the Orange Free State, and also South West Africa—had its Provincial Municipal Association. Each of these bodies had an annual conference, but the real work was done by an Executive Committee. The Executive Committee consisted of elected or nominated representatives usually decided upon at the annual conference. This Executive Committee met periodically, probably once a quarter, to discuss general problems that have arisen or which may have been put forward by any of the constituent local authorities, as well as legislation affecting local government, and so forth. From each executive, representatives were also appointed to attend an annual conference of what was known as the United Municipal Executive. This national body met in Cape Town each year while Parliament was sitting. Its agenda included the study of parliamentary legislation which may affect local government interests, and such matters as the policy to be adopted in regard, for instance, to the representations to be made to the Borckenhagen Committee referred to above dealing with the financial relationship between local government on the one hand and the Government and the Provinces on the other. To watch after its interests during the rest of the year, it appointed an action committee consisting of representatives from each Province.

The Institute of Town Clerks had a close connexion with the provincial associations either officially as an institute or through individual town clerks. The Transvaal Municipal Association, for instance, elected a number of town clerks in addition to councillors as members of the executive. The town clerks of Johannesburg and Pretoria were automatically members in terms of the constitution. A town clerk also acted as honorary secretary of the association, in addition to which a material percentage of matters coming before the executive were referred by this body to the District Executive Committee of the Institute of Town Clerks for its report and recommendation.

In so far as the United Municipal Executive was concerned, once again the Institute of Town Clerks had representatives present in an advisory capacity at the annual meetings and also at the action committee meetings. Reports from the Institute were also submitted to both these meetings. It may be worth noting that, while the Institute of Municipal Treasurers and Accountants were not represented at all on the Transvaal Municipal Association it was nevertheless a vital ingredient in the meetings of the United Municipal Executive. This was largely because for the last 16 odd years the United Municipal Executive had devoted a very large proportion of its time to making representations in regard to the financial relations between local authorities and the Government and the Provinces. The result was that the Institute of Municipal Treasurers and Accountants have done considerably more work for the United Municipal Executive than had the Institute of Town Clerks.

Reading of Papers at Conferences:

This is another matter which had received a good deal of attention lately. Prior to the establishment of the Institute the practice in South Africa had been for fairly lengthy papers to be written and then read at the conference by the author. We thought this was a bad procedure as it was rather boring to listen to a long paper being read, so we arranged for the papers to be circulated to delegates about a fortnight before the conference. The idea was that there would then be no necessity to read them, and the author of the paper could either give a short introduction to his paper or he could speak to the paper in a more entertaining manner. This had not worked out very well in practice, however, because it had been found that a material percentage of the delegates, more especially councillors, do not read the papers although they were circulated in advance. As a result papers are still circulated by us, and some delegates study these papers before the conference, but then, because of the others who do not, they had to listen to the whole paper or most of it being read at the conference.

At our last conference we actually had a paper on the procedure to be adopted at conferences in this regard, and on the general conduct of debate, and many points of view were expressed. Perhaps the most notable result of this discussion was that at our next conference we intend to have a common theme running through at least two of the papers to be presented, and that as an innovation we propose to have a notice of motion put forward and debated in place of one of the usual papers.

Press at Committee Meetings:

Mr. Porter mentioned this matter because he had noticed that this question has recently cropped up in the United Kingdom. There had been a move afoot in the Transvaal to allow the press to be present at committee meetings under certain conditions, but this idea had been opposed by the Transvaal Municipal Association. Nevertheless, it would be very interesting to know from some of the other Commonwealth countries whether the press are allowed at committee meetings and, if so, with what results. His own opinion had been inclined to favour the admission of the press to that part of a committee meeting which consists of the discussion of matters delegated to the committee for final disposal. In Johannesburg, for instance, 80 *per cent.* of the committee agenda never reached the council except in the form of minutes for the council's information. As it is a requirement that the press should be allowed to attend council meetings, it seemed only logical that when the council delegates powers of disposal to a committee, the press should be entitled to be present. On the other hand, there would have to be some very definite restrictions as otherwise the whole advantage of committee procedure would fall away and committee meetings would be in danger of becoming debating forums in the same way as council meetings. It might be suggested, for instance, that if the press are to be allowed any such privilege, they must give an undertaking that they would not quote individual councillors. There are undoubtedly many difficulties in the way, but he was sure we had not heard the last of the subject.

Mayor's Minute and the Town Clerk's Triennial Report in Johannesburg:

A Mayor's Minute was produced in most towns and cities of any size in Southern Africa. Apparently, the practice started with the original Mayor of Durban, Mr. George Cato. He was elected in August, 1854, and at the end of his first year of office Mr. Cato reported to his fellow councillors on the council's activities during that year, and called his report the Mayor's Minute. This practice spread through South Africa to the Rhodesias and to the new Federation, the Minute normally incorporating the annual reports of the various heads of departments. Thus, over a century's accumulation of facts, figures and opinions lie to hand in municipal archives and libraries which were undoubtedly of great value to students of local government.

In Johannesburg, the Mayor's Minute had been published since 1904, but the inclusion of the various reports of heads of departments was making the Minute somewhat bulky, apart from which much of the information contained in these reports was purely statistical. When he became town clerk in 1945, it struck him as somewhat anomalous that the town clerk never presented an annual report while practically all other heads of departments did so. Moreover, so far as he had been able to ascertain no town clerk in this country had ever done so. This seemed strange viewed against the fact that the town clerk should be in a better position than any other head of department to review the work of the council as a whole, and to give a balanced picture of its activities. A head of department, in presenting a report, dealt solely with the activities of his own department, and as a result his report was almost entirely factual without telling any particular story. Mr. Porter felt that he could usefully produce a report which would tell a story, and wrote his first report in 1948 to cover the period since he had been town clerk, *i.e.*, from September,1945. Thereafter, he produced an annual report for a few years but found the task of reviewing the whole of the council's activities so often a little more than he could manage. He therefore tried a report every two years, but then came to the conclusion that if the report were not to be an annual one it would be more logical to have a triennial report coinciding with the period of office of each council, *i.e.*, from one triennial general election till the next. Copies of his report had been sent to a fair number of centres overseas, and he had been surprised and gratified at the interest shown. He was finding, however, that the triennial report was inclined to become too large, the last one extending to over 200 pages, and while he hoped to be able to continue producing this report, he proposed to endeavour to reduce its volume. He thought there was considerable value in giving a view of the council's activities as seen through the eyes of the town clerk, and this does perhaps emphasize the rather special nature of his position in the council's organization and his functions as chief administrative officer and co-ordinator (however imperfect) of the council's service.

Talking of co-ordination, in Johannesburg approximately 950 pages of reports are prepared by the various departments, including the town clerk's department, all of which then pass through the staff of this department and are altered or edited where necessary, or discussed with the head of the department concerned, prior to being circulated to councillors for consideration in committee. This centring of reports on the town clerk with his right to edit or discuss was somewhat unusual, but it could result in a greater measure of co-ordination if time permits. Incidentally, all these 950 pages of reports had to be sent out in both official languages and this involves, as may be imagined, a large translation department and a fairly constant battle against time.

POLITICAL AFFAIRS

"The word 'Politics,' sir," said Mr. Pickwick, on his introduction to Count Smorltork, "comprises in itself a difficult study of no inconsiderable magnitude."

"'Ah!' said the Count, drawing out his tablets, 'ver good—fine words to begin a chapter. Chapter 47—Poltics. The word Poltic surprises by himself—' and down went Mr. Pickwick's remarks in Count Smorltork's tablets, with such variations and additions as the Count's exuberant fancy suggested, or his imperfect knowledge of the language occasioned."

Those who know their Dickens will remember that the Count was (in the words of Mrs. Leo Hunter) "the famous foreigner, gathering materials for his great work on England." His visit had lasted, at the time, for a fortnight, and he proposed to remain another week. The aggregate period of his stay seemed to him ample for the collection of the necessary notes upon the English scene—"music, picture, science, poetry, poltic; all tings."

The method has changed very little since *Pickwick* was published. Distinguished foreigners fly in for a few days, and within 24 hours of their arrival are prepared to comply with any request to give their impressions of English institutions in a newspaper interview or a television appearance. They fly out again, a week or so later, and within a couple of days of returning home they are writing books and newspaper articles, and engaging in lecture-tours, as authorities upon the manners and customs, the art and architecture, the political and economic outlook, of our nation. It is a method satisfying both to their follow-countrymen and to ourselves; to them, because their emissaries invariably return home convinced of the accuracy of locally-preconceived notions about a place their readers or hearers have never seen (thus affording conclusive proof of the acumen of their observations and the standard of intelligence in their country at large); to us, because it is both flattering and interesting to see ourselves as others see us, even if the picture is blurred by transience and distorted by constant movement. The Grand Tour of the 18th century, when the sons of English noblemen travelled with their tutors and resided for months, or even years, in Florence, Rome or Venice, steeping themselves in European culture, and collecting pictures, statues and books, was a fashion well-suited to the leisurely refinement of that learned epoch; the present habit of flitting from place to place, spending a couple of hours in the art galleries of The Hague, an evening "doing" the night-life of Paris, and half-a-day seeing "places of interest" in Brussels, Antwerp and Bruges, is typical of the trivial superficiality of this restless, bustling, vulgar age.

By the time these lines are in print the General Election will have come and gone, and innumerable foreign observers will have toured our principal urban and rural areas and recorded their impressions of what is called "British democracy at work." We take leave to doubt whether they will be much wiser for their pains. The impression left on an onlooker from abroad—particularly France or the United States, where politics is a serious business—is that it is all a Homeric contest, a fight to the death; that the hard things said by the chairman of the government party on the shortcomings of popular members of the opposition, and the devastating criticisms, offered by the secretary of the party in opposition, in regard to the administrative and legislative deficiencies of the party recently in power, neither could nor ought to be forgotten or forgiven; and that, even if the maligned personages do not go so far as to challenge their opponents to a duel, or endeavour to bring about the ruin of their reputations and fortunes, they will at any rate refuse all social contact with them and shun them like the plague. Then there is the impression of intense excitement; the din and noise of battle, reported by all the organs of publicity at second-hand, like the messenger in a Greek tragedy recounting the tremendous and portentous events which (so the audience is given to understand) have taken place off-stage; the last minute surprises of Nomination Day; the cut-and-thrust at public meetings; the bellicose speeches of rival candidates; the cheering and counter-cheering at the Poll. Every Englishman knows perfectly well that the struggle is to a great extent a sham fight; that the controversial statements and the slashing verbal attacks are a convention (did not the Earl of Derby, in 1849, quote a great Whig authority for the statement that "the duty of an Opposition is very simple—to oppose everything and propose nothing," and had not Lord Randolph Churchill, in 1830, said much the same thing of his own party?) Everybody knows, too, that

Nomination and Polling are usually quite decorous affairs; that public meetings are rather dull bouts of preaching to the converted, interspersed with occasional good-humoured heckling to enliven the proceedings a little. Rival candidates may be business associates or social acquaintances; political opponents, both in the House and outside, probably call each other by their christian names.

Electoral reforms, by granting universal adult suffrage, have done away with the feeling that the voters are a privileged minority, living precariously among the unenfranchised masses and lording it over their envious and inferior neighbours. In 1837, when this journal was founded, and *Pickwick* first saw the light of day, Lord John Russell's Reform Act was only five years old, and the extension of the franchise had still a long way to go. An election in those times was a good deal more exciting, for all the extra glare of publicity that is turned upon the participants today; at any rate it seems so from the vivid account that Mr. Pickwick and his friends have given us of the Eatanswill by-election:

> "There was a grand band of trumpets, bassoons and drums, marshalled four abreast, and earning their money, if ever men did, especially the drum-beaters, who were very muscular. There were bodies of constables with blue staves, 20 committee-men with blue scarves, and a mob of voters with blue cockades. There were electors on horseback and electors afoot. There was an open carriage and four for the Honourable Samuel Slumkey and there were four carriages and pair for his friends and supporters; and the flags were rustling, and the band was playing, and the constables were swearing, and the 20 committee-men were squabbling, and the mob were shouting, and the horses were backing, and the post-boys were perspiring; and everybody and everything then and there assembled was for the special use, behoof, honour and renown of the Honourable Samuel Slumkey, of Slumkey Hall, one of the candidates for the representation of the Borough of Eatanswill in the Commons House of Parliament of the United Kingdom."

Certain formalities which were considered indispensible on that occasion have survived to our own day. "Twenty washed men at the street-door" for the candidate to be seen "shaking hands with" (as his agent, Mr. Perker, put it); six children in arms that he was "to pat on the head and inquire the age of" (one at least of whom he was, if possible, to kiss)—these were regarded as the bare essentials. But the British sense of humour reigned supreme, in Mr. Pickwick's time as in our own; for when the Mayor called up all his faculties of civic eloquence in addressing the crowd with an adoption speech, he was greeted by a stentorian voice that cried:

> "Success to the Mayor! and may he never desert the nail and sarspan business as he got his money by!"

"This allusion" (says the Pickwickian record) "to the professional pursuits of the orator was received with a storm of delight which, with a bell accompaniment, rendered the remainder of the speech inaudible."

How this popular nomination speech was succeeded by others; how the rival candidate, Horatio Fizkin, Esquire, endeavoured to address the electors, and how his voice was drowned by the aforementioned band, "performing with a power to which their strength in the morning was a trifle"; how the Buffs belaboured the heads and shoulders of the Blues, how the crowd struggled and pushed and fought, until the constables were constrained to interfere, may be read in those immortal pages. Both candidates said that "the trade, the manufactures, the commerce, the prosperity of Eatanswill would ever be dearer to their hearts than any earthly object, and each had it in his power to state, with the utmost confidence, that he was the man who would eventually be returned."

These last-mentioned assurances, and the self-confidence that produces them, are part of a scene familiar to our minds today. Their very familiarity breeds, not contempt, but affection; since the profession of politics would never seem the same without the good old "gags," the recognized "tricks of the trade."

A.L.P.

PERSONALIA

APPOINTMENTS

Mr. Harold J. Brown, Q.C., recorder of Norwich, has been appointed Judge of the Sussex county court circuit, in succession to the late Judge Dutton Briant, Q.C. He was called to the bar in 1930 and took silk in April, 1955. He was appointed assistant chairman of West Sussex quarter sessions in 1955.

Mr. D. C. L. Potter, Mr. R. B. Willis, Mr. R. G. Dow and Mr. H. S. J. Ruttle have been appointed county court Judges at Willesden, Bloomsbury, Brentford and Uxbridge and Lambeth courts respectively.

Mr. M. L. Berryman, Q.C., has been appointed chairman of Hertford quarter sessions. Mr. F. P. Crowder has been appointed deputy chairman.

Mr. Henry Ince Nelson, Q.C., recorder of Liverpool from 1950 to 1954, has been appointed a deputy commissioner under the National Insurance Acts.

Mr. T. G. Holden, LL.B., assistant solicitor, Nottinghamshire county council, has been appointed deputy clerk of the Oxfordshire county council with effect from November 16, next, in succession to Mr. J. Atkinson, LL.B., who has been appointed clerk of the East Sussex county council.

Mr. John Edward Tinker, assistant county treasurer for Cheshire since 1950, has been recommended for appointment as deputy county treasurer. He succeeds Mr. C. W. Mallinson, recently appointed county treasurer for West Sussex.

Mr. P. H. Light, F.C.C.S., senior legal assistant, Royal Borough of Kensington, has been appointed chief legal assistant, city of Leicester, in succession to Mr. S. E. James, who has retired after 34 years at Leicester.

Superintendent John Morrison, of the organization department of Liverpool city police, has been promoted divisional chief superintendent.

Mr. H. C. Hicks, formerly a deputy chief inspector with the county borough of Southend-on-Sea, has been appointed chief inspector of weights and measures and markets superintendent with the corporation of Boston.

Superintendent William Cavey, deputy chief constable of Brighton, has been promoted to chief superintendent. He moved to Brighton from Exeter, where he was chief of the C.I.D., during the conspiracy case in 1957. He was appointed to his present position two months ago.

Mr. Geoffrey Hope, who is at present serving as a probation officer with the city of Warwick combined probation committee, has been appointed a probation officer in the East Riding of Yorkshire combined probation area, with effect from November 1, next. The vacancy arose through the death of Mr. John W. Benton, who had been in the service of the East Riding probation committee for the past 16 years.

RETIREMENTS AND RESIGNATIONS

Sir Robert Adcock, C.B.E., clerk of the Lancashire county council, clerk of the peace and clerk to the lieutenancy, is to retire at the end of March, next. He has held the position since 1944. He was awarded the C.B.E., in 1941 and was knighted in 1950.

Mr. R. Walsh, town clerk of Sutton Coldfield for 22 years, has announced his intention of resigning. He was previously town clerk of Boston, Lincs.

OBITUARY

Mr. James Main Garrow, chief constable of Derbyshire for ten years, has died at the age of 74. He joined Derbyshire county police in 1903, was appointed assistant chief constable in 1922 and chief constable in 1941.

Mr. Richard Bateman, assistant clerk of Burton-on-Trent courts from 1900 to 1941, and clerk to the borough and county justices from 1941 to 1945, has died at the age of 81.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Bastardy—*Children of bigamous marriage—Mother now married—Application for affiliation orders.*

Mrs. B has applied to the magistrates' clerk for summonses against X in respect of two children C and D. Mrs. B, who was then a single woman, married X in June, 1951, and in August of the same year C was born. One year later D was born. Later X was tried and convicted of bigamy in respect of this ceremony and served a prison sentence as a result.

Mrs. B took no proceedings at the material time and has allowed eight years to elapse, during which time she has "remarried." She is still living with her second "husband" and the children are staying with them. She now wishes to make X contribute towards the upkeep of C and D, but for the purposes of affiliation proceedings Mrs. X does not appear to be a single woman.

Is there any remedy available to her under the above or any other proceedings?

Would the National Assistance Board be able to proceed for any affiliation order should Mrs. B ever need such assistance?

F. UTILE.

Answer.

The mother is living with her husband and is therefore not a "single woman" (*Taylor* v. *Parry* (1951) 115 J.P. 119; [1951] 1 All E.R. 355). There seems to be no method available at present to her of applying for affiliation orders. The National Assistance Board could take proceedings on her behalf if the children ever require assistance (*see National Assistance Board* v. *Mitchell* (1955) 119 J.P. 572; [1958] 3 All E.R. 291; and *National Assistance Board* v. *Tugby* (1957) 121 J.P. 149; [1957] 1 All E.R. 509).

However, when the Legitimacy Act, 1959 comes into force on October 29, next, the mother can apply by virtue of s. 4 of that Act since she was a "single woman" at the dates of birth of the children, provided she can prove that the father supported them within twelve months from the births.

2.—Children and Young Persons Act, 1933—*Detention in remand home—Probation order.*

A, a boy aged 12 years, was with three other boys on January 1, 1959, convicted of larceny and placed on probation for three years. Last month he committed a further offence of larceny to which he pleaded guilty. At the hearing the magistrates were asked to deal with the original offence for which A was placed on probation in January.

1. The magistrates wished to send A to a remand home for two weeks under s. 54, Children and Young Persons' Act, 1933, in respect of the second offence but were adamant that he should undergo a further term of probation in respect of the original offence.

It would seem that if this were done it would be contrary to the Lord Chief Justice's dictum in *R.* v. *Evans* (1959) 123 J.P. 128; [1958] 3 All E.R. 673, in that he was being detained in respect of one offence and placed on probation at the same time for another offence.

2. It is appreciated that this result might be achieved by committing him to the remand home in respect of the second offence and adjourning sentence on the first offence until the boy was released from the remand home but this would appear to be merely "getting round" the dictum. The bench do not consider this is a case for an approved school or a fit person order.

3. A further way of achieving the magistrates' wish would be to deal only with the second offence by committing him to the remand home and refusing to deal with the original offence thus leaving the three year probation order intact. It is appreciated that the probation offcer will not be able to exercise any supervision during the period during which A is in the remand home but this would seem to be of technical importance only.

Again this method would seem to have the same effect as the order made in *R.* v. *Evans* and might be said to be objectionable.

I shall be grateful for your opinion as to whether any of the sentences in the shape of 1, 2 or 3 are practical. UNILO.

Answer.

Before the court can deal with the offence in respect of which the probation order was made it must first have dealt with the further offence. The order for the boy to be committed to custody in a remand home can be made only if the court considers that none of the other methods in which the case could be dealt with is suitable, and it is clear from the judgment in *R.* v. *Evans, supra,* that a fresh probation order should not be made at the same time.

The court could, however, decline to deal with the original offence in connexion with the commission of the further offence and leave the probation order in force. In our opinion this course would not be inconsistent with the judgment in *R.* v. *Evans,* which was decided in connexion with the making of a detention centre order and a probation order at the same time.

In the circumstances it seems unnecessary to consider postponing dealing with the original offence until the period of detention in the remand home has ended.

3.—Highways—*Carriage crossings over footways.*

In the notes to cl. 154 the committee on consolidation of highway law proposed that s. 18 of the Public Health Acts Amendment Act, 1907, should be repealed and model cl. 36 enacted instead. The report went on:

"Under the model clause the person affected who initiates proposals for making a crossing may not carry out the works necessary to provide a crossing but at his request these may be executed by the local authority at his expense."

By this I understand that such a person cannot carry out the works, but on reading s. 155 of the Highways Act, 1959, I cannot read this meaning into the section. The section, as I see it, provides for the case where the highway authority considers that a crossing is necessary and also for the case where a person wishes a crossing to be constructed, the section making provision for the crossing to be constructed by the highway authority at that person's request, but there does not seem to be any provision which would prohibit a person from making a crossing himself, though presumably the highway authority and planning authority would have to give consent to the design and construction of the crossing. I should be glad to know whether you agree with my interpretation of the section. P. RUSTICUS.

Answer.

No person has the right to do work which interferes with the surface of a highway, except under statute, after it has become repairable by the inhabitants at large and vested in the highway authority. There is no power therefore for any person to construct a crossing except under s. 18 of the Public Health Acts Amendment Act, 1907, and there will in future be no such power except as provided by s. 155 of the Highways Act, 1959.

4.—Highways—*Private street—Communal refuse bins.*

There are unmade streets in the council's district where the surface is in too poor a condition to permit the passage of refuse collection vehicles, and it has been the practice for many years to place communal refuse bins for the reception of house refuse at the end of certain of these streets upon a part of what would be the footway, were the streets properly made up. Householders living on the unmade streets deposit their household refuse in the bins. The bins reduce the width of the footway by not more than two *ft.* and little, if any, real obstruction is caused. The council's view has been that they have authority to do this by virtue of s. 76 (1) of the Public Health Act, 1936, which provides *inter alia* that local authorities may provide receptacles for refuse in streets and public places. The council have not undertaken to remove house refuse from these streets under s. 72 of the Act.

An owner of the subsoil in one of the streets concerned, where the bins have been placed for some 10 years, is now arguing that s. 76 (1) does not give the council the necessary authority, on the ground that the section relates only to receptacles for street refuse, such as dust, dirt, rubbish, mud, road scrapings, ice, snow and filth. It does seem possible to interpret s. 76 (1) (*a*) in two ways, but I cannot see that it can be intended to relate only to street refuse, because subs. (2) refers to the sale of refuse removed from any premises, including any street, and subs. (3) refers to dustbins placed in any street or forecourt for the purpose of having their contents being removed by the local authority.

Your opinion would be welcome as to whether:

(*a*) Section 76 (1) (*a*) enables the council to place communal refuse bins in streets for the reception of household refuse;

(*b*) The owner of the subsoil of the street could object and take action for trespass;

(*c*) The council could be said to be unlawfully obstructing the street by placing the bins thereon.

DAZOL.

Answer.

(*a*) Section 76 (1) (*a*) re-enacts s. 13 of the Public Health Act, 1925, which was confined to receptacles for street refuse. We do not think the re-enacted power is wider. Full effect can be given to subs. (2) without assuming that subs. (1) (*a*) contemplates house refuse, because subs. (2) speaks of refuse removed from any premises including any street "under this part of this Act." The words quoted are omitted from the reference to subs. (2) in the query.

(*b*) Yes, in our opinion.

(*c*) Yes: *cp.* the *dicta* in *Wandsworth Corporation* v. *Baines* (1906) 70 J.P. 124. Since a householder cannot lawfully place (nor can a local authority require or authorize him to place) his dustbin in the street, except for a short time while awaiting its' emptying, it follows that a local authority cannot lawfully place there a permanent obstruction, unless they can point to some statutory power.

5.—Housing Act, 1957—*Demolition—Clearance and demolition orders—Extent of demolition.*

The owners of a substantial number of vacant houses subject to operative clearance and demolition orders made under ss. 43 and 17 respectively of the Housing Act, 1957, have been called upon to demolish the houses in accordance with the orders. In some cases, however, the owners have merely removed the roofs and roof timbers and the internal floors and ceilings have been pulled down. The word "demolish" is not defined in the Act nor, as far as I have been able to determine, has it received judicial consideration in this context.

It would appear that the word, therefore, must be used in its ordinary sense as meaning to destroy and that the houses should be razed to the foundations. Alternatively, it might be argued in relation to a property affected by a demolition order that since s. 16 (1) and the proviso to s. 17 (1) refer to "houses" the order is complied with as soon as the premises have been rendered wholly incapable of use as a house, and that the stripping of the roof and the rendering of the property open to the weather has this effect. Section 17 (1) and s. 21 (*b*) of the Act, however, speak of the demolition of the "premises." With regard to clearance orders, s. 44 (3) of the Act provides that the appropriate owner is obliged to demolish the "building" to which the order applies.

It is surprising that the word "demolish" has not been judicially interpreted having regard to the present extent of the clearance of unfit houses throughout the country and I shall be obliged to receive your opinion as to whether the word "demolish" either in connexion with demolition order or clearance orders means that the entire structure of the house must be brought down to ground level, or otherwise what works would be sufficient to constitute compliance with the order.

P. HASC.

Answer.

An order to demolish requires, in our opinion, that the house be brought down to the level of the ground. There has been a county court case to this effect: *see Bacup Corporation* v. *O'Neill* (1939) 103 J.P.N. 557.

6.—Licensing—*Licence holder in prison—Wife continuing to carry on business—Wife not "a fit and proper person"—Question of transfer.*

The holder of a justices' on-licence is sentenced to 12 months' imprisonment for felony, and the brewery company wishes to transfer the licence to a new tenant.

Section 21 (4), Licensing Act, 1953, does not authorize a transfer in these circumstances unless it can be said that the holder of the licence "has given up occupation of the premises" by reason of his incarceration in prison. In fact his wife and children, with the household furniture and effects, are still at the licensed house, and the present licensee will regard the licensed house as his home even though he himself is at present undergoing an enforced absence therefrom.

The conviction constitutes a breach of the tenancy agreement between the brewery company and the licensee, and the company could take civil proceedings to obtain possession, but this will take some time to determine and in the meantime the licensee, responsible for the management of the premises, is a person in prison.

The licensee will not consent to give up possession to anyone, even his wife, and in any event she is not a fit and proper person in the circumstances of this case.

At the moment the wife is continuing to sell just as though her husband was about the premises and will not agree to anyone else doing so.

How may a speedy transfer be achieved, and what is the position with regard to breaches of the Licensing Act, 1953, in the meantime?

N. WHITE ROSE.

Answer.

This is a situation such as arises from time to time and for which licensing law provides no cut and dried solution. Obviously, it cannot be allowed to continue on the footing that the licence holder shall continue as such while he is serving a sentence of imprisonment.

We think that a case for transfer falls within s. 20 (4) (*d*) of the Licensing Act, 1953, and a protection order might be granted to the licence holder's wife who remains in occupation: but as she is a person whom the licensing justices regard as not fit and proper to hold a licence her application is likely to fail under s. 21 (6) of the Act.

It rests with the brewery company to present to the licensing justices a practical and acceptable solution; even, if necessary, by putting their nominee into occupation of what may be described as the business side of the premises (where he will operate under the authority of a protection order) and seeking an injunction to restrain the wife from interfering pending their taking proceedings to obtain complete possession of the premises.

The consent of the licence holder to the grant of a protection order or transfer of the licence is not required by law.

We do not think that the wife would be convicted of breaches of the Licensing Act, 1953: she continues to act as her husband's "representative" (as this term is used in s. 21 (4) (*a*) (*d*) of the Act) in the same way as she would act during his illness or holiday.

7.—Road Traffic Acts—*Disqualification until test passed—Form and effect of such a disqualification.*

Section 6 (3) of the Road Traffic Act, 1934, allows a court before which a person is convicted of an offence under s. 11, s. 12 or s. 15 of the Act of 1930, whether that person has passed the prescribed test of competence to drive, or not, and whether or not the court makes an order under s. 6 of the Act of 1930 disqualifying him for holding or obtaining a licence to drive a motor vehicle, order him to be disqualified for holding or obtaining a licence to drive a motor vehicle until he has, since the date of the order, passed that test.

In the case of the conviction of a person of such an offence has the court power:

(*a*) To make an order limiting disqualification to holding or obtaining a licence to drive a particular class of vehicle until the prescribed test of competence to drive vehicles of that class has been passed, or

(*b*) As an alternative to make an order of disqualification from holding or obtaining a licence, not limited to any particular class of vehicle until the prescribed test of competence to drive vehicles of a specified class has been passed?

If a court has power to make, and makes an order in the form of alternative (*a*) above no difficulty appears to arise as to the effect of such order, but if such an order is made, although there is no power to do so, what is the effect?

If a court makes an order in the form of alternative (*b*), will the passing of the prescribed test of competence to drive vehicles of the specified class entitle the person convicted to obtain and hold a licence to drive vehicles of other classes covered by the licence he held immediately before the order of disqualification was made, or will he have to pass separate tests?

Your opinion will be appreciated.

M. TEST.

Answer.

There is no power to attach any conditions to an order of disqualification under s. 6 (3), *supra*, other than the one set out in the subsection *i.e.*, that the offender be disqualified for holding or obtaining a licence to drive a motor vehicle until he has, since the date of the order, passed the prescribed test of competence to drive. A person so disqualified may not drive any motor vehicle, except as a provisional licence holder, until he has passed the test. He is at liberty to take his test on the motor vehicle of his choice and, if he passesd the test on that vehicle, he would be granted the appropriate licence and be entitled to drive any vehicle covered by his licence.

The answer to (*a*) and (*b*) is "No."

If a court purports to make an order which it has no jurisdiction to make it is not a valid order and can be challenged on appeal. It is difficult to advise satisfactorily on the legal effect of an order made in excess of jurisdiction when that order is not challenged by appeal.

Land and Estate Agents, Auctioneers, Valuers and Surveyors—Continued

MIDDLESEX

POTTERS BAR & DISTRICT.—WHITE, SON & PILL, 58 High Street. Tel. 3888.

SURREY

ESHER.—W. J. BELL & SON, Chartered Surveyors, Auctioneers and Estate Agents, 51 High Street, Esher. Tel. 3551/2. And at 2 Grays Inn Square, W.C.1. Tel. Chancery 5957.

GUILDFORD.—CHAS. OSENTON & CO., High Street. Tel. 62927/8.

SUSSEX

H. D. S. STILES & CO. (H. D. S. Stiles, F. A. R. Bessant, Chartered Surveyors), Chartered Auctioneers and Estate Agents, 6 Pavilion Buildings, Brighton, Tel. 23244 (4 lines); 3 The Steyne, Worthing, Tel. 9192/3; and at Loddon.

WARWICKSHIRE

BIRMINGHAM.—J. ALFRED FROGGATT & SON, F.A.I., Chartered Auctioneers, Valuers & Estate Agents, Unity Buildings, 14 Temple Street, Birmingham. Tel. MIDland 6811/2.

Official Advertisements

ESSEX PROBATION AREA

Appointment of Liaison Probation Officer

APPLICATIONS are invited for the appointment of a full-time probation officer primarily to assist in the duties of a liaison probation officer at the Courts of Assize and quarter sessions for Essex.

Applicants must be not less than 23 nor more than 40 years of age except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949–59, and the salary will be according to the scale prescribed by those rules.

Applicants should be able to drive a car.

Applications stating age, present position, qualifications and experience, together with the names of two referees, must reach the undersigned not later than seven days after the appearance of this advertisment.

W. J. PIPER,
Clerk of the Peace and of the Probation Committee.

Office of the Clerk of the Peace,
Tindal Square,
Chelmsford.

NOTTINGHAMSHIRE MAGISTRATES' COURTS COMMITTEE

APPLICATIONS are invited for the appointment of third Assistant to the Clerk to the Justices for the borough and petty sessional division of Newark and the petty sessional division of Southwell (population approximately 55,000). Candidates should be competent typists and previous magisterial experience (particularly of Collecting Officer's duties) or other legal experience will be an advantage. Salary within Grade A (£660—£760 per annum) of the salary scale of the Joint Negotiating Committee for Justices' Clerks' Assistants whose conditions of service will be applicable. The appointment is superannuable and will be subject to medical examination and to one month's notice on either side.

Applications with the names of two persons to whom reference can be made to be sent to the Clerk to the Justices, Town Hall, Newark not later than Wednesday, October 21, 1959.

GEORGE NORTON,
Clerk to the Committee.

CAERPHILLY URBAN DISTRICT COUNCIL

Assistant Clerk of the Council

APPLICATIONS are invited from Solicitors with local government experience. Salary —A.P.T. IV (£1,065—£1,220). Housing for limited period, if required. Full details available from Clerk, Council Offices, Mountain Road, Caerphilly, to whom applications to be returned by November 9, 1959.

STAFFORDSHIRE MAGISTRATES' COURTS COMMITTEE

Appointment of Whole-time Justices' Clerk

APPLICATIONS are invited from persons qualified in accordance with s. 20 of the Justices of the Peace Act, 1949, for the position of whole-time Justices' Clerk to serve the following divisions in the county of Stafford which it is proposed to group as from July 1, 1960: Wednesbury Borough Division and Tipton, Wednesbury and Willenhall petty sessional divisions with a total estimated population according to the estimated mid-1958 census figure of 131,947.

The salary will be at the rate of £2,210 × £70 (1) × £65 (2) × £70 (1) × £65 (1) to £2,545 per annum. The appointment will be superannuable and subject to three months' notice on either side and the successful candidate will be required to undergo a medical examination.

It is anticipated that the principal office will be established at Wednesbury and the person appointed will be supplied with staff appropriate to the appointment and all necessary books, stationery and office equipment in connexion therewith. An allowance will be paid for any necessary travelling and subsistence expenses within the area.

Applications, giving full particulars of age, qualifications and experience, together with the names and addresses of three referees, to be received by the undersigned not later than October 30, 1959.

The covering envelope should be marked "Application for appointment of whole-time Justices' Clerk."

Canvassing will be a disqualification.

T. H. EVANS,
Clerk to the Magistrates' Courts Committee.

County Buildings,
Stafford.
October 2, 1959.

BOROUGH OF WANSTEAD AND WOODFORD

Town Clerk's Department

Chief Administrative Assistant

APPLICATIONS are invited for the above appointment on Grade A.P.T. IV plus London Weighting. Applicants should have wide administrative experience in a Town Clerk's Department and preference will be given to applicants with appropriate examination qualifications, committee experience and knowledge of election procedure.

Applications giving full details of age, education, qualifications and experience, should reach me by October 14, 1959.

A. McCARLIE FINDLAY,
Town Clerk.

Municipal Offices,
High Road,
Woodford, E.18.

CITY OF PLYMOUTH

Assistant Solicitor

APPLICATIONS are invited for the above appointment within the Special Classes Scale (£835 to £1,165). Previous experience in a local government office is not essential. Detailed applications, naming two referees, to the undersigned not later than Tuesday, October 27, 1959.

S. LLOYD JONES,
Town clerk.

Pounds House,
Peverell, Plymouth.

COUNTY BOROUGH OF SOUTHEND-ON-SEA

Assistant Solicitor

APPLICATIONS are invited for this post in Grade A.P.T. V (£1,220—£55 (1)—£50 (2)—£1,375) at a commencing salary according to qualifications and experience. The duties, although general, will include some assistance to the Prosecuting Solicitor so that experience of advocacy is desirable.

Forms of application obtainable from the undersigned should be returned by October 30, 1959.

ARCHIBALD GLEN,
Town Clerk.

COUNTY BOROUGH OF WOLVERHAMPTON

Appointment of Male Probation Officers

APPLICATIONS are invited for the appointment of two male Probation Officers, such appointments being subject to the Probation Rules 1949–1958. Applicants must be not less than 23 nor more than 40 years of age, except in the case of a serving officer.

These posts are superannuable and the selected candidates will be required to pass a medical examination.

Housing accommodation may be available if required.

Applications, stating age, present position, qualifications and experience, together with copies of two recent testimonials, should reach the undersigned not later than October 24, 1959.

T. T. CROPPER,
Secretary of the Probation Committee.

48 Waterloo Road,
Wolverhampton.

CITY OF BRADFORD

Appointment of Whole-time Female Probation Officer

APPLICATIONS are invited for the above post. The appointment and salary are subject to the Probation Rules and applicants should be between the ages of 23 and 40, except in the case of serving probation officers.

The appointment is superannuable, and applicants will be required to pass a medical examination.

Applications, stating age, education, qualifications, and experience, together with copies of two recent testimonials, should be sent to the undersigned not later than October 20, 1959.

FRANK OWENS,
Secretary to the Probation Committee.

Town Hall,
Bradford 1.